

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ASHLEY J. GUYETTE,

Plaintiff,

v.

Case No. 21-CV-0791

**CASEY FIELDS and
NEW LONDON POLICE DEPARTMENT,**

Defendants.

ORDER

Plaintiff Ashley Guyette, who is currently confined at Taycheedah Correctional Institution and who is representing herself, filed a complaint under 42 U.S.C. §1983 alleging that the defendants violated her civil rights. (ECF No. 1.) She also filed a motion for leave to proceed without prepayment of the filing fee. (ECF No. 2.) Because not all parties have had the opportunity to consent to magistrate judge jurisdiction, the case was randomly referred to a U.S. District Court Judge for the limited purpose of screening the complaint. This order resolves Guyette's motion for leave to proceed without prepayment of the filing fee and screens the complaint.

1. Motion for Leave to Proceed without Prepaying the Filing Fee

The Prison Litigation Reform Act (PLRA) applies to this case because Guyette was a prisoner when she filed her complaint. *See* 28 U.S.C. §1915(h). The PLRA allows the court to give a prisoner plaintiff the ability to proceed with her case without prepaying the civil case filing fee. 28 U.S.C. §1915(a)(2). When funds exist, the prisoner must pay an initial partial filing fee. 28 U.S.C. §1915(b)(1). She must then pay the balance of the \$350 filing fee over time, through deductions from her prisoner account. *Id.*

On June 30, 2021, the Court ordered Guyette to pay an initial partial filing fee of \$48.62 by July 30, 2021. (ECF No. 5.) Guyette paid the fee on July 21, 2021. Accordingly, the Court

grants her motion for leave to proceed without prepaying the filing fee. She must pay the remainder of the filing fee over time in the manner explained at the end of this order.

2. Screening the Complaint

2.1 Federal Screening Standard

Under the PLRA, the Court must screen complaints brought by prisoners seeking relief from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §1915A(a). The Court must dismiss a complaint if the prisoner raises claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915A(b).

In determining whether the complaint states a claim, the Court applies the same standard that applies to dismissals under Federal Rule of Civil Procedure 12(b)(6). *See Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017) (citing *Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 899 (7th Cir. 2012)). To state a claim, a complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The complaint must contain enough facts, accepted as true, to “state a claim for relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

To state a claim for relief under 42 U.S.C. §1983, a plaintiff must allege that someone deprived her of a right secured by the Constitution or the laws of the United States, and that whoever deprived her of this right was acting under color of state law. *D.S. v. E. Porter Cty. Sch. Corp.*, 799 F.3d 793, 798 (7th Cir. 2015) (citing *Buchanan–Moore v. Cty. of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009)). The Court construes *pro se* complaints liberally and holds them to a less stringent standard than pleadings drafted by lawyers. *Cesal*, 851 F.3d at 720 (citing *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015)).

2.2 Guyette’s Allegations

Guyette alleges that in 2011, defendant Casey Fields, who was an officer with the New London Police Department, sexually assaulted her. (ECF No. 1 at 3.) Specifically, he told her she

needed to come into his house to “sign some papers” related to a “recent incident” she had with the police department. When she entered his house, he then sexually assaulted her. (*Id.*) Two years later, in April 2013, Fields was involved in the search of Guyette’s house that ultimately led to Guyette’s arrest and incarceration. (*Id.* at 4.) Once Guyette was incarcerated at Taycheedah in 2015, she reported the 2011 sexual assault, and a Prison Rape Elimination Act investigation was opened. (*Id.* at 5.) Guyette then states that New London Police Chief Jeff Schleiter came to speak with her and informed her that Fields was no longer with the police force. (*Id.*)

2.3 Analysis

While Guyette’s allegations are unfortunate, she brings her suit far too late to form a valid cause of action under §1983. Because section 1983 does not contain its own statute of limitations, federal courts borrow the limitations period and tolling rules applicable to personal-injury claims under state law. *Devbrow v. Kalu*, 705 F.3d 765, 767 (7th Cir. 2013) (citing *Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012)). In Wisconsin, “the applicable residual statute for § 1983 claims is Wis. Stat. § 893.53.” *D’aquisto v. Love*, No. 20-c-1034, 2020 WL 5982895 at *1, (E.D. Wis. Oct. 8, 2020). During the relevant time period, Wis. Stat. §893.53 provided for a six-year statute of limitation period. A §1983 claim accrues on “the date that the plaintiff knew or should have known that his constitutional rights had been violated.” *Savory v. Lyons*, 469 F.3d 667, 672 (7th Cir. 2006).

Though the statute of limitations is normally asserted by defendants as an affirmative defense, “when the existence of a valid affirmative defense is so plain from the face of the complaint that the suit can be regarded as frivolous, the district judge need not wait for an answer before dismissing the suit.” *Walker v. Thompson*, 288 F.3d 1005, 1009-10 (7th Cir. 2002). Guyette filed her lawsuit nearly 10 years after the sexual assault occurred, which was the date she knew or should have known her constitutional rights had been violated. Because she was not incarcerated at the time, there was no exhaustion requirement that could have potentially tolled the limitations period. As such, her case is far outside the statute of limitations and is dismissed.

3. Conclusion

IT IS THEREFORE ORDERED that that Guyette's motion for leave to proceed without prepaying the filing fee (ECF No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that this case is **DISMISSED** under 28 U.S.C. §§1915(e)(2)(B) and 1915A(b)(1) because the complaint is frivolous as it is clearly time-barred.

IT IS FURTHER ORDERED that the Clerk of Court document that this inmate has incurred a "strike" under 28 U.S.C. §1915(g).

IT IS FURTHER ORDERED that the agency having custody of Guyette shall collect from her institution trust account the \$300.00 balance of the filing fee by collecting monthly payments from Guyette's prison trust account in an amount equal to 20% of the preceding month's income credited to her trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. §1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this case. If Guyette is transferred to another county, state, or federal institution, the transferring institution shall forward a copy of this order along with her remaining balance to the receiving institution.

IT IS FURTHER ORDERED that a copy of this order be sent to the officer in charge of the agency where Guyette is confined.

IT IS FURTHER ORDERED that a copy of this order be emailed to DLSFedOrdersEastCL@doj.state.wi.us.

IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly.

Dated in Milwaukee, Wisconsin this 9th day of September, 2021.

s/ Brett H. Ludwig

BRETT H. LUDWIG
United States District Judge

This order and the judgment to follow are final. Plaintiff may appeal this Court's decision to the Court of Appeals for the Seventh Circuit by filing in this Court a notice of appeal within **30 days** of the entry of judgment. *See* Fed. R. App. P. 3, 4. This Court may extend this deadline if a party timely requests an extension and shows good cause or excusable neglect for not being able to meet the 30-day deadline. *See* Fed. R. App. P. 4(a)(5)(A). If Plaintiff appeals, she will be liable for the \$505.00 appellate filing fee regardless of the appeal's outcome. If Plaintiff seeks leave to proceed *in forma pauperis* on appeal, she must file a motion for leave to proceed *in forma pauperis* with this Court. *See* Fed. R. App. P. 24(a)(1). Plaintiff may be assessed a "strike" by the Court of Appeals if his appeal is found to be non-meritorious. *See* 28 U.S.C. §1915(g). If Plaintiff accumulates three strikes, she will not be able to file an action in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he demonstrates that he is in imminent danger of serious physical injury. *Id.*

Under certain circumstances, a party may ask this Court to alter or amend its judgment under Federal Rule of Civil Procedure 59(e) or ask for relief from judgment under Federal Rule of Civil Procedure 60(b). Any motion under Federal Rule of Civil Procedure 59(e) must be filed within **28 days** of the entry of judgment. Any motion under Federal Rule of Civil Procedure 60(b) must be filed within a reasonable time, generally no more than one year after the entry of judgment. The Court cannot extend these deadlines. *See* Fed. R. Civ. P. 6(b)(2).

A party is expected to closely review all applicable rules and determine, what, if any, further action is appropriate in a case.